

HUMAN SERVICES BOARD

INTRODUCTION

FINDINGS OF FACT

2. At the time, the petitioner's son was on an IEP, and had a history of behavioral issues, including two charges of

assault having been brought against him in juvenile court in 2005 and 2006.

3. In 2005 the petitioner had reported to the Department that her son's behavior was beyond her control.

4. The mental health worker who reported the case to the Department in February 2008 was concerned that the boy's stepfather was not his legal guardian, and that the boy had a history of confrontation with his stepfather.

5. In March 2008 the mental health worker reported to the Department that the stepfather was about to throw the petitioner's son out of his house due to the boy's uncontrollable behavior (which included driving an unregistered car and leaving home for days at a time).

6. On April 3, 2008 the Department informed the petitioner, who had moved to Alaska, that it would be necessary for her son to have a legal guardian appointed. The petitioner told the Department that she would ask to have the boy's stepfather appointed as his guardian. She later informed the Department that she was in the process of having a family friend become her son's guardian.

7. The petitioner returned to Vermont for a short time in May or June of 2008, but she did not make arrangements for a guardianship for her son before she returned to Alaska.

8. Based on the above, the Department substantiated a finding that the petitioner had abandoned her son.

ORDER

The Department's decision is reversed.

REASONS

Abuse and neglect are specifically defined in the statute in pertinent part as follows:

(2) An "abused or neglected child" means a child whose physical health, psychological growth and development or welfare is harmed or is at substantial risk of harm by the acts or omissions of his or her parent or other person responsible for the child's welfare. . .

(3) "Harm" can occur by:

. . .

(B) Failure to supply the child with adequate food, clothing, shelter, or health care. . .

(C) Abandonment of the child.

(4) "Risk of harm" means a significant danger that a child will suffer serious harm other than by accidental means, which harm would be likely to cause physical injury, neglect, emotional maltreatment or sexual abuse.

33 V.S.A. § 4912

The Department concedes that at the time of its substantiation in this matter there was no further definition in the statutes of "abandonment". However, the Department

argues that the Board should follow the definition in 33 V.S.A. § 5102(3)(A), which was enacted on January 1, 2009 as part of CHINS statutes that govern juvenile court proceedings. That definition provides:

A person is considered to have abandoned a child if the person is: unwilling to have physical custody of the child; unable, unwilling, or has failed to make appropriate arrangements for the child's care; unable to have physical custody of the child and has not arranged or cannot arrange for the safe and appropriate care of the child; or has left the child with a care provider and the care provider is unwilling or unable to provide care or support for the child, the whereabouts of the person are unknown, and reasonable efforts to locate the person has been unsuccessful.

Even if the above statute can be deemed applicable to substantiation cases, based on the above findings it cannot be concluded that the petitioner's actions in this matter were serious enough to rise to the level specified or contemplated by the above definition.

First, there is no evidence in this matter that the petitioner in 2008 was "unwilling to have physical custody" of her son. The petitioner alleges that she wanted him to go with her to Alaska, but that he refused, and she didn't feel she could force him.

Nor is there any evidence that the petitioner "failed to make appropriate arrangements for the child's care". Again,

the petitioner clearly made these arrangements, but her son refused to cooperate and abide by them.

Moreover, the petitioner's whereabouts were never unknown. At all times, it appears that the child's school, health care providers, and the Department itself were able to contact and communicate with the petitioner in Alaska.

Finally, there is no evidence that the petitioner's son was ever actually without food, clothing, shelter, or access to education and medical care. The Department does not allege, and it is difficult to imagine, what possible difference the mere appointment of a legal guardian would have made for the petitioner's son for the few months that remained before his eighteenth birthday. Although the petitioner's actions may not have demonstrated the height of parental responsibility, there is no evidence that her move to Alaska and failure to seek a guardianship for her son, *in and of themselves*, caused her son any "harm" or placed him at any "significant danger" of harm within the meaning and contemplation of any of the above statutes.¹

For all the above reasons, the Department's decision substantiating the matter as neglect and/or abandonment must

¹ If the boy was truly at risk of harm during this time, why didn't the Department, itself, take legal action in his behalf?

be reversed, and the petitioner's name must be removed from the Department's child abuse registry.

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